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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/690,653      | 10/21/2003  | Shiping Wang         | GL-6171             | 5864             |

7590 02/02/2006

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EXAMINER

BERNATZ, KEVIN M

ART UNIT PAPER NUMBER

1773

DATE MAILED: 02/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/690,653

Applicant(s)

WANG ET AL.

Examiner

Kevin M. Bernatz

Art Unit

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                                               |                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                                              | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/23/05</u> . | 6) <input type="checkbox"/> Other: ____.                                                |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Cancellation of claims 1 – 17 and 37 – 50, filed on November 16, 2005, has been entered in the above-identified application.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

3. Claims 18 – 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry (U.S. Patent No. 5,869,072) in view of Mansouri (U.S. Patent App. No. 2001/0006680 A1) and Murray et al. (U.S. Patent No. 4,920,158), and further supported by applicants' admissions for the reasons of record as set forth in Paragraph No. 3 of the Office Action mailed on June 28, 2005.
4. Claims 19 – 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry in view of Mansouri, Murray et al. and supported by applicants' admissions as applied above, and further in view of Dresdner, Jr. et al. (U.S. Patent No. 5,357,636) for the reasons of record as set forth in Paragraph No. 4 of the Office Action mailed on June 28, 2005.

Art Unit: 1773

5. Claims 30 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry in view of Mansouri, Murray et al. and supported by applicants' admissions as applied above, and further in view of Bazin et al. (U.S. Patent No. 6,001,367) for the reasons of record as set forth in Paragraph No. 5 of the Office Action mailed on June 28, 2005.

### ***Response to Arguments***

**6. The rejection of claims 18 - 36 under 35 U.S.C § 103(a) – Berry in view of various references**

Applicant(s) argue(s) that “the Examiner errs in alleging that Berry teaches an *elastomeric glove*”, continuing that “Berry teaches a glove formed of a mesh or scrim material” (*page 8 of response*). Applicants further argue that the claimed invention requires “1) an elastomeric substrate (article)” and that the rejection is “devoid of an elastomeric article, among other things” (*page 10 of response*). The Examiner respectfully disagrees.

The Examiner notes that there appears to be a difference in interpretation of the scope of the present claim 18. Specifically, the Examiner notes that the specification is not the measure of the invention. Therefore, limitations contained therein cannot be read into the claims for the purpose of avoiding prior art. *In re Sporck*, 55 CCPA 743, 386 F.2d 924, 155 USPQ 687 (1968). It appears that applicants are interpreting the language “an elastomeric article comprising a coating composition on the skin-contacting surface” to require a separate elastomer layer. The Examiner disagrees with

Art Unit: 1773

this interpretation. Rather, the Examiner notes that the entire article, including the coating layer must be “elastomeric”. The Examiner notes that this is disclosed by Berry (i.e. a porous, *flexible* sheet formed from an emulsification of polyvinyl alcohol dried into a solid polymer). While the mesh is only disclosed as being formed from nylon, the Examiner notes that Dresdner, Jr. et al. (see *Paragraph 4 of the Office action mailed June 28, 2005*) supports the Examiner’s position of Official notice regarding forming the mesh out of the materials claimed in claims 19 – 22. However, the Examiner still notes that none of claims 19 – 22 require a separate elastomeric layer. Should applicants desire to claim an elastomeric article comprising both an elastomeric substrate and a coating, the Examiner recommends amending claim 18 to positively recite “an elastomeric article comprising an elastomer layer and a coating composition on the skin-contacting surface of said elastomer layer, ...”. Finally, the Examiner notes that claims 34 – 36 do not even require an elastomeric article.

Applicants also argue that the “Examiner errs in alleging that the prior art structure ... is capable of performing Applicants’ medical examination and surgeon’s function” (*pages 8 – 9 of response*). The Examiner respectfully disagrees.

The Examiner notes that the finished Berry product is not porous, but a solid structure comprising a porous substrate filled with the disclosed therapeutic compounds. The Examiner further notes that there is no *evidence* that the glove could not function as an “examination glove” or a “surgeon’s glove”, especially given that Berry teaches that forming an outer layer which functions as a barrier layer is within the scope of the disclosed invention. Finally, the Examiner notes that nothing precludes the

Art Unit: 1773

wearing of the Berry gloves under a typical neoprene/nitrile glove for use during examination or surgery to provide comfort to the examiner or surgeon, hence meeting the intended use limitations.

Finally, applicants argue that the cited Mansouri and Murray references are non analogous art, since “[n]either Mansouri nor Murray pertain to glove coatings or elastomeric glove surfaces” (*page 9 of response*). The Examiner respectfully disagrees.

While the Examiner acknowledges that they do not pertain to glove coatings or elastomeric glove surfaces, both references are clearly analogous to Berry since both deal with therapeutic compounds for treating skin, which is identical to the teachings in the Berry reference. Furthermore, the relied upon references provide explicit prior art teaching for any “creative fabrications” or “unsubstantiated alleged equivalencies”.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 1773

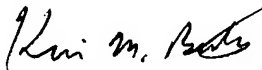
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin M Bernatz whose telephone number is (571) 272-1505. The examiner can normally be reached on M-F, 9:00 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KMB  
January 31, 2006

  
Kevin M. Bernatz, PhD  
Primary Examiner